

Employment and Staffing

Non-Dual Status (NDS) Technician Employment

Summary of Changes. This regulation establishes the policy and procedures for the use of Non-Dual Status employees within the California National Guard technician program. This regulation also replaces any Technician AGR Administrative Instruction (TAAI) concerning this subject published before 15 October 2007.

Applicability. California National Guard Full-time Personnel Regulation (CNGFPR) applies to all California Army and California Air National Guard technicians and to commanders, managers and supervisors (military or civilian) with authority or responsibility over technician personnel management.

Proponent and Exception Authority. The proponent of this handbook is the Joint Force Headquarters, J-1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulation.

Supplementation. Supplementation of this regulation is prohibited.

Suggested Improvements. Users of this regulation are invited to send comments and suggested improvements to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, Sacramento, CA 95826-9101.

Distribution. Distribution of this regulation is Army - A and Air Force - F.

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1. Purpose.

This technician personnel regulation establishes the conditions for use and procedures to request Non-Dual Status (NDS) positions/employees within the California National Guard. In the event this regulation conflicts with other applicable directives, the Directorate for Human Resources will be responsible for resolving the conflict.

2. General NDS Information.

Not every technician position can be filled by a NDS employee. A determination has been made as to which positions in the National Guard have either inherently military duties or a “stay-behind” mission. Based on this model, appropriate NDS position descriptions (“N” series PDs) have been developed. Dual Status (DS) position descriptions are not approved for use by NDS employees.

3. Management of NDS Target Authorizations.

NGB has allocated to each state a specific number of NDS target allocations (Army/Air) to insure the entire National Guard does not exceed the congressionally mandated NDS employment ceiling. At no time may the California National Guard exceed the NDS allocations without NGB approval. Further, these target allocations are managed by the Directorate for Human Resources who allocate them on a case-by-case basis. When a NDS vacancy occurs, the NDS employment allocation is returned to the Directorate for Human Resources for a determination of its best use in the entire California Army or Air National Guard. Actual numbers of NDS employment allocations at a specific location may increase or decrease based on overall mission needs and command decisions. If an NDS target allocation is unavailable, the position may be filled with a DS technician.

4. Internal Merit Promotion.

Current California National Guard career or career conditional NDS employees may apply for promotion, reassignment, or change-to-lower grade to any advertised NDS vacancy announcement(s). Supervisors should consider the upward promotion of current California National Guard NDS employees when determining which positions to announce. Vacancy announcements may be published which allow only for current California National Guard NDS employees who have career or career conditional status. Non-Dual Status vacancy announcements may run concurrently with DS vacancy announcements. The determination to which position NDS or DS to be filled will be made by the supervisor in conjunction with HRO coordination and approval.

5. Types of NDS and Appointment Authorities.

a. Non-Dual Status target allocations include both permanent NDS and temporary NDS employment statuses. Non-Dual Status employees may work either a full-time or part-time schedule. A NDS employee working on a part-time work schedule is considered as one NDS employee against the NDS target allocation. The following are NDS appointment authorities commonly available to the California National Guard.

(1) 30-Day Critical Need – 5 CFR 213.3102(i)(2), the Directorate for Human Resources may make 30-day appointments. Competitive procedures do not apply for 30-day critical need appointments. Appointments under this authority can be extended for one additional 30 day time period.

(2) Student Educational Employment Programs – Comprised of two components:

(a) Student Temporary Employment Program (STEP) – Non-competitive appointment under Schedule B 213.3202(a) for a period of time not to exceed one year which may be extended in one year increments as long as they meet the definition of a “student.” Student is defined as an individual who has been accepted, or who is enrolled, as a degree (diploma, certificate, etc.) seeking student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. The student’s academic/career goals do not have to relate to the work being performed (NDS technician position description).

(b) Student Career Experience Program (SCEP) - Appointed non-competitively under Schedule B 213.3202. Subject to the requirements governing career/career-conditional employment, such as background investigation, the student’s academic and career goals must relate to the work being performed. Prior to appointment, a formal agreement is initiated between the California National Guard, school and the student. A SCEP appointment has non-competitive conversion rights into a permanent position for 120 days after completion of a minimum of 640 hours of work (includes compensatory time, does not include annual or sick leave) and the educational goal outlined in the formal agreement.

(3) Temporary Emergency Need – Appointments may be made by the Directorate for Human Resources under 5 CFR 213.3102(i)(3) on a temporary basis for up to one year, and may be extended for an additional period of time not exceeding one more year for positions affected by or needed to deal with the aftermath of the September 11th attacks. Requests beyond the two year limit require Department of Defense approval. Temporary Emergency Need appointments do count against the California National Guard NDS target allocation ceiling. Paragraph 10 contains procedural information.

b. Career/Career Conditional NDS Appointments using competitive procedures may be made through:

(1) Delegated Examining Unit (DEU) – Delegated authority from the Office of Personnel Management (OPM) to prepare vacancy announcements which are open to any US citizen meeting the OPM qualification criteria. If you are considering utilizing a DEU authority you must contact the Directorate for Human Resources, Staffing, early in the process as this program is detail intensive. It is normal for the complete DEU process to take upwards of 6 months. Prior to using a DEU to publish a vacancy announcement, the selecting official must complete a “crediting plan” and forward it with the request to advertise the vacancy. The “crediting plan” is basically an explanation of the Knowledge, Skills, and Abilities (KSA’s) which is used by the DEU to rate and rank applicants. The Certificate of Eligibles from the DEU will be rated and listed in rank order and selecting officials must follow the “rule of three” when making selections. The “rule of three” requires the selection from

among the top three candidates listed on the certificate. The California National Guard Directorate for Human Resources does not possess DEU authority.

(2) Reinstatement Authority – A NDS person who previously was employed under career or career-conditional appointment. There is no time limit on the reinstatement eligibility of a person who has completed the service requirement for career tenure (3 years). There is a three-year time limit (following the date of separation) on the reinstatement eligibility of a person who has not completed the service requirement for career tenure.

(3) Transfer Authority – A career or career-conditional individual may be appointed by transfer to a NDS position without break in service of a single workday. A transfer can be a promotion as long as the time-in-grade requirements have been met, reassignment, or change to lower grade.

(4) Veteran Employment Opportunity Act (VEOA) of 1998 – VEOA provides that agencies must allow eligible veterans to apply for positions announced under merit promotion procedures when the agency is recruiting from outside its own workforce. ("Agency," in this context, means the parent agency, i.e., Treasury, not the Internal Revenue Service and the Department of Defense, not Department of the Army.) A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment. Veterans' preference is not a factor in these appointments. To be eligible for a VEOA appointment, a candidate must be a veteran separated after 3 or more years of continuous active service performed under honorable conditions. Veterans who were released shortly before completing a 3-year tour are considered to be eligible. ("Active service" defined in Title 37, United States Code, means active duty in the uniformed services and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned.) All employees appointed under the VEOA are subject to a probationary period and to the requirements of their agency's merit promotion plan. The VEOA gives veterans access and opportunity to apply for positions for which the agency is accepting applications beyond its own workforce under merit promotion procedures.

c. National Guard Technician Non-Competitive Appointment Authority – Under 5 CFR 315.610 eligible National Guard dual status technicians may be non-competitively appointed as an NDS employee. The dual status technician must have been involuntarily separated (other than by removal for cause on charges of misconduct or delinquency), served at least three years as a military technician, and be appointed within 1 year after separating from service as a National Guard Technician. A valid NGB approved NDS position description is required.

6. Veterans Preference.

The National Guard Technician Act of 1968 codified as Title 32 USC exempts all full-time positions in the National Guard from the veteran's preference requirements in Title 5 USC 2108 and 3502.

7. Requirements for NDS Positions and Employees.

- a. Competitive procedures normally apply to all NDS positions.
- b. Non-Dual Status employees must be a US citizen.
- c. Non-Dual Status employees must meet OPM qualification standards.
- d. Non-Dual Status employees must meet OPM time-in-grade requirements for promotion consideration.
- e. Non-Dual Status positions are subject to the DoD Priority Placement Program (PPP) which allows for the immediate non-competitive employment/reemployment of "very well qualified" candidates. Commanders, managers, and supervisors are cautioned that if a match of a "very well qualified" candidate occurs and the candidate accepts the position, the placement action will occur without a vacancy announcement.

8. General Restriction on Movement after Competitive Appointment.

Only after 3 months has elapsed since the NDS employee's latest non-temporary competitive appointment may the California National Guard promote a NDS employee; reassign a NDS employee to a different line of work or to a different geographical area; transfer a NDS employee of the same or different agency to a higher grade, different line of work, or to a different geographical area; reinstate a former NDS employee of the same or different agency to a higher grade, different line of work, or to a different geographical area. (Reference 5 CFR 330.501).

9. Time-in-Grade Requirements for NDS Employees.

Requirements intended to prevent excessively rapid promotions in the General Schedule. Generally, a NDS employee may not be promoted more than two grades within one year to positions up to GS-5. Above the GS-5, a NDS employee must serve a minimum of one year in grade, and cannot be promoted more than one grade, or two grades if that is the normal progression (two grade interval position). Dual Status employees are not affected by this time-in-grade requirement.

10. Emergency NDS Employees.

a. In light of ongoing contingency operations and declaration of a National State of Emergency, the Directorate for Human Resources may backfill a DS technician position with a NDS employee using emergency hiring flexibilities when the incumbent has been deployed. The Directorate for Human Resources may also appoint a temporary NDS employee under the emergency need authorities for additional or surge workload directly resulting from and in support of the Global War on Terrorism (GWOT) and the subsequent mobilizations. The following conditions must be met prior to any appointment to backfill behind a deployed DS technician:

(1) The DS technician must be deployed, not-in-place, in support of current Federal emergency or contingency operations.

(2) All NDS technicians hired to backfill a DS position must be hired temporarily under Temporary Emergency Need appointment.

(3) Dual Status position descriptions are not approved for use by NDS employees. Non-Dual Status position descriptions are developed by the HRO under specific guidance from NGB-J1-TNC for NDS positions established for this purpose.

(4) A reasonable effort must be made to fill the DS position with a military member meeting the DS criteria prior to filling the position with an NDS incumbent. Requests for NDS backfill of mobilized DS employees must address the efforts at the local level and/or vacancy announcements to fill the mission need. Conversely commanders, managers, and supervisors may make an assessment that there reasonably would be no qualified DS applicants available and to publish a vacancy announcement would be detrimental to mission accomplishment.

b. Appointments under emergency hiring flexibilities are exceptions to traditional competitive appointments and qualifications are determined by the Directorate for Human Resources. Technicians hired under this guidance are afforded the same rights, opportunities and privileges of other National Guard Technicians with similar status. Additionally, appointments under these authorities are exempted from mandatory placement provisions of the Department of Defense Priority Placement Program.

c. Requests to use emergency NDS employees must be made by memorandum addressed to the Directorate for Human Resources and must include, as a minimum, the name of the mobilized technician who is being backfilled, the start and stop dates of the mobilized technician's current active duty orders, the emergency hiring flexibility requested, and certification that the position is necessary for mission accomplishment. If the purpose of the emergency NDS is for additional workload in direct support of GWOT the memorandum must make the correlation between the action requested and GWOT support; either memorandum should accompany the complete documentation required to implement the requested personnel action.

d. Technicians hired under these exceptions are afforded the same rights, opportunities, benefits and privileges of other National Guard Technicians with similar status.

e. Under no circumstances will a commander, director, or supervisor/manager advise a new employee to begin working in a position without prior confirmation from the Directorate for Human Resources.

11. Re-employed Annuitants.

a. Former Federal employees who have retired and are currently receiving a Federal Civil Service retirement annuity and who accept another federal civil service appointment are re-employed annuitants. Without a waiver condition described in 11b, re-employed annuitants' retirement annuity is reduced by the amount of salary received (dollar for dollar) in the new federal civil service appointment.

b. Title 5 USC, Section 9902(j), gives the agency authority to hire and set salary of newly appointed annuitants, i.e., individuals receiving an annuity from the Civil Service Retirement and Disability Fund, at the appropriate pay rate for the position without a reduction in pay or of the annuity. As a result, the salary of the annuitant is not offset by the amount of the annuity received for the period of employment. Generally, an annuitant may not be employed in the same position held prior to retirement unless the next level manager or supervisor has given approval. Requests to utilize this authority must be requested in writing to the Directorate for Human Resources and are subject to either Criteria 1 or Criteria 2:

(1) Criteria 1:

(a) Positions that are determined hard-to-fill as evidenced by historically high turnover, a severe shortage of candidates or other significant recruiting difficulty.

(b) Positions that are critical to the accomplishment of the organization's mission.

(c) To complete a specific project or initiative.

(d) Individuals who have unique or specialized skills.

(e) Unusual qualifications not generally available.

(2) Criteria 2: For not more than 2087 hours (e.g., one year full-time, or two years part-time) to mentor less experienced employees and/or to provide continuity during critical organizational transitions. Extensions beyond 2087 hours are not authorized.

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